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7

8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 **UNITED STATES OF AMERICA,**

Case No. **C99-02637 M**

12 Plaintiff,

13 v.

14 **NICOLE D. SMART,**

15 Defendant,

**WRIT OF CONTINUING  
GARNISHMENT**

16 and

17 **KAISER PERMANENTE,**

18 Garnishee.  
19 \_\_\_\_\_/

20 TO: Payroll Department  
KAISER PERMANENTE  
21 2101 Webster Street, 3rd Floor  
Oakland, CA 94612  
22

23 YOU ARE HEREBY COMMANDED TO GARNISH FOR THE BENEFIT OF  
24 THE UNITED STATES OF AMERICA THE WAGES, SALARY, OR COMMISSION IN  
25 YOUR CUSTODY, CONTROL, OR POSSESSION IN WHICH THE DEFENDANT-  
26 JUDGMENT DEBTOR HAS AN OWNERSHIP INTEREST.

27 The name, SSN XXX-XX-7503, and last known address of the person who is  
28 the defendant-judgment debtor (hereinafter "debtor") in this action and whose property

1 is subject to this Writ are as follows:

2 NICOLE D. SMART  
3 309 Weymouth  
Hercules, CA 94547

4 This Writ has been issued at the request of the United States of America to  
5 enforce the collection of a civil judgment entered in favor of the United States against  
6 the debtor for a defaulted student loan in the amount of \$1,397.80. There is a balance  
7 of \$2,615.93 due on the judgment, which amount includes costs and interest  
8 computed through September 8, 2015.

9 The following are the steps that you must take to comply with this Writ. If you  
10 have any questions, you should consult with your attorney.

11 1. Pursuant to 28 U.S.C. § 3205(c)(2)(F), if you have in your custody, control,  
12 or possession any property of the debtor, including wages, salary, or commissions, in  
13 which the debtor has a substantial nonexempt interest, or if you obtain custody,  
14 control, or possession of such property while this Writ is in effect, you must  
15 immediately withhold such property from the debtor and retain it in your possession  
16 until you receive instructions from the Court which will tell you what to do with the  
17 property. The United States has requested that the sum of 25% of the debtor's  
18 disposable earnings, which under California law represents the nonexempt portion of  
19 the debtor's earnings, be withheld from the defendant's earnings.

20 2. Pursuant to 28 U.S.C. § 3205(c)(2)(E), you are required to answer this Writ  
21 within 10 days after service of this Writ upon you. You must answer the Writ even if  
22 you do not have in your custody, control, or possession any property of the debtor.  
23 Pursuant to 28 U.S.C. § 3205(c)(4), your answer must state, under oath, the following  
24 information:

- 25 a. Whether or not you have in your custody, control, or possession, any  
26 property owned by the debtor in which the debtor has a substantial  
27 nonexempt interest, including nonexempt, disposable earnings;  
28

- b. a description of such property and the value of such property;
- c. a description of any previous garnishments to which such property is subject and the extent to which any remaining property is not exempt; and
- d. the amount of the funds you anticipate owing to the debtor in the future and whether the period for payment will be weekly or another specified period.

For your convenience, a form which addresses the above-requested information is attached and may be used to Answer the Writ.

3. After you complete the answer under oath, pursuant to 28 U.S.C. § 3205(c)(2)(E) & (c)(4), within ten (10) days after service of this Writ upon you, you must mail or deliver the original Answer bearing the original signature of the person preparing the answer to the Court at the following address:

Civil Clerk, United States District Court  
450 Golden Gate Avenue, 16th Floor  
San Francisco, CA 94102

At the same time that you mail or deliver the original answer to the Court, you must also mail or deliver a copy of the original Answer to both the debtor and attorney for the United States at the following respective addresses:

NICOLE D. SMART  
309 Weymouth  
Hercules, CA 94547

Michael Cosentino, Attorney at Law  
P.O. Box 129  
Alameda, CA 94501

Please note that the attached form Answer contains a certificate of service which needs to be completed by the person mailing the copies of the answer to the debtor and the attorney for the United States, and which needs to be filed along with the Answer.

**IF YOU FAIL TO ANSWER THIS WRIT OR FAIL TO WITHHOLD PROPERTY**

1 IN ACCORDANCE WITH THIS WRIT, THE UNITED STATES MAY PETITION THE  
2 COURT FOR AN ORDER REQUIRING YOU TO APPEAR BEFORE THE COURT TO  
3 ANSWER THE WRIT AND TO WITHHOLD PROPERTY IN ACCORDANCE WITH  
4 THE WRIT BEFORE THE APPEARANCE DATE. IF YOU FAIL TO APPEAR OR DO  
5 APPEAR AND FAIL TO SHOW GOOD CAUSE WHY YOU FAILED TO COMPLY  
6 WITH THIS WRIT, THE COURT WILL ENTER A JUDGMENT AGAINST YOU FOR  
7 THE VALUE OF THE DEBTOR'S NONEXEMPT INTEREST IN SUCH PROPERTY  
8 (INCLUDING NONEXEMPT DISPOSABLE EARNINGS). THE COURT MAY ALSO  
9 AWARD A REASONABLE ATTORNEY'S FEE TO THE UNITED STATES AND  
10 AGAINST YOU IF THE WRIT IS NOT ANSWERED WITHIN THE TIME SPECIFIED  
11 HEREIN AND IF THE UNITED STATES FILES A PETITION REQUIRING YOU TO  
12 APPEAR.

13 SUSAN Y. SOONG, Clerk  
14 United States District Court  
15 for the Northern District of California

16 Dated: 9/11/2015

17 By:   
18 Deputy Clerk Mark Romyn



## DO NOT WITHHOLD THE EXEMPT PORTION OF THE EMPLOYEE'S EARNINGS

1. Earnings include any money (whether called wages, salary, commissions, bonuses, or anything else) paid for personal services, pension, or retirement. Vacation or sick pay is earnings subject to withholding as it is *received* by the employee.

2. Disposable earnings are different from gross pay or take-home pay. They are the earnings left after deducting the part which state or federal law requires an employer to withhold as mandatory deductions. Generally, these mandatory deductions are federal income tax, social security (FICA) tax, state income tax, state disability insurance, and payments to public employee retirement systems. Disposable earnings can change from pay period to pay period, whenever gross pay or required deductions change.

To determine earnings that<sup>1</sup> are eligible for withholding, and therefore must be withheld, see the chart below.

USE THE CHART BELOW TO DETERMINE NONEXEMPT DISPOSABLE EARNINGS AND THE APPLICABLE WITHHOLDING AMOUNT<sup>1</sup>:

Pay Period:	Weekly or oftener	Every 2 weeks	Twice a month	Once a month
<b>Disposable earnings:</b>	\$ 0 to \$217.50	\$ 0 to \$435.00	\$ 0 to \$471.25	\$ 0 to \$942.50
<b>Withhold:</b>	Nothing (entire earnings are exempt)			
<b>Disposable earnings:</b>	\$217.51 to \$290.00	\$435.01 to \$580.00	\$471.26 to \$628.33	\$942.51 to \$1,256.67
<b>Withhold:</b>	Amt. over \$217.50	Amt. over \$435.00	Amt. over \$471.25	Amt. over \$942.50
<b>Disposable earnings:</b>	\$290.01 or more	\$580.01 or more	\$628.34 or more	\$1,256.68 or more
<b>Withhold:</b>	25% of disposable earnings (balance is exempt)			

<sup>1</sup>Based on the Federal Minimum Wage Earnings of \$7.25 an hour, effective 07/24/2009

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

NICOLE D. SMART,

Defendant,

and

KAISER PERMANENTE,

Garnishee.

Case No. C99-02637 M

**ANSWER OF GARNISHEE**

I, \_\_\_\_\_, being first duly sworn, hereby state the following:

1. I am the \_\_\_\_\_ (Official Title) of the Garnishee  
named in the above caption. I am authorized to prepare this Answer on behalf of the  
Garnishee.

2. The Garnishee was served with the Writ of Continuing Garnishment on  
\_\_\_\_\_ (date) in this action.

3. The Garnishee currently has custody, control, or possession of earnings of  
the Defendant. Yes\_\_\_\_ No\_\_\_\_

4. The Garnishee expects to obtain custody, control, or possession of earnings

of the Defendant in the foreseeable future. Yes\_\_\_\_ No\_\_\_\_

5. For the pay period in effect on the date of service of this Writ of Continuing Garnishment, the Garnishee states as follows:

a. Defendant was in my/our employ. Yes\_\_\_\_ No\_\_\_\_

b. The Defendant's pay period is \_\_\_\_ weekly, \_\_\_\_ bi-weekly,  
\_\_\_\_ semi-monthly, \_\_\_\_ monthly.

c. The Defendant's present pay period began on \_\_\_\_\_ (date).  
("Present" means the pay period in which the Writ of Continuing  
Garnishment was served.)

d. The Defendant's present pay period ends on \_\_\_\_\_ (date).

e. The Defendant's net wages are as calculated below:

(1) Gross Pay \$\_\_\_\_\_

(2) Federal income tax \$\_\_\_\_\_

(3) F.I.C.A. tax \$\_\_\_\_\_

(4) State income tax \$\_\_\_\_\_

(5) SDI \$\_\_\_\_\_

Total tax withholdings \$\_\_\_\_\_

Net Wages \$\_\_\_\_\_  
(gross pay minus above withheld taxes)

6. Are there any other garnishments currently in effect? Yes \_\_\_\_ No \_\_\_\_

If the answers is yes, describe below and attach to this Answer a copy of each  
garnishment:

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7. Will the Garnishee owe the Defendant money in the foreseeable future?

Yes \_\_\_\_ No\_\_\_\_ If the answer is yes, provide the reason why such money will be  
owed, the amount of money that will be owed, and the date or dates on which each

1 payment will be due:

2	3	4	5
Type of			Date Payment
<u>Payment</u>	<u>Amount</u>		<u>Will be Due</u>
1. _____	_____		_____
2. _____	_____		_____
3. _____	_____		_____

7 8. Does the Garnishee currently have custody, control or possession of property  
 8 (other than earnings) such as bank accounts, pensions, thrift plans, etc., in which the  
 9 Defendant maintains an interest? Yes\_\_\_\_ No\_\_\_\_ If the answer is yes, then  
 10 provide the following information for each item of such property:

11	12	13	14
Description of	Approximate	Description of	
<u>Property</u>	<u>Value</u>	<u>Defendant's Interest</u>	
1. _____	_____	_____	
2. _____	_____	_____	
3. _____	_____	_____	
4. _____	_____	_____	

17 9. Does the Garnishee expect to obtain in the foreseeable future custody,  
 18 control or possession of property (other than earnings) such as bank accounts,  
 19 pensions, thrift plans, etc., in which the Defendant maintains an interest? Yes\_\_\_\_  
 20 No\_\_\_\_ If the answer is yes, then provide the following information for each item of  
 21 such property:

22	23	24	25	26	27
Description of	Approximate	Description of	Date Will		
<u>Property</u>	<u>Value</u>	<u>Defendant's Interest</u>	<u>Obtain</u>		
1. _____	_____	_____	<u>Property</u>		
2. _____	_____	_____			
3. _____	_____	_____			
4. _____	_____	_____			



1           10. Does the Garnishee have any objections or defenses to the Writ of  
2 Continuing Garnishment? Yes\_\_\_\_ No\_\_\_\_ If the answer is yes, list the nature  
3 and basis of each objection and/or defense:

4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_

9           On behalf of KAISER PERMANENTE, I hereby certify under penalty of perjury  
10 under the laws of the United States of America that the foregoing is true and correct.

11  
12 Telephone # \_\_\_\_\_

13  
14 Fax # \_\_\_\_\_

15  
16  
17 Dated: \_\_\_\_\_

By: \_\_\_\_\_

18  
19 (Sign above and type or print name below)  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I, \_\_\_\_\_, declare:

That I am a citizen of the United States and employed in the County of

\_\_\_\_\_, California; that my business address is

\_\_\_\_\_; that I am

over the age of eighteen years; and that I am not a party to the above-entitled action;

That on \_\_\_\_\_ (date), I deposited in the United States mail, in envelopes bearing the requisite postage, a copy of:

**ANSWER OF GARNISHEE**

addressed to each of the following, at their last known addresses, at which place there is service by United States mail.

NICOLE D. SMART  
309 Weymouth  
Hercules, CA 94547

Michael Cosentino  
Attorney at Law  
P.O. Box 129  
Alameda, CA 94501

This Certificate was executed on \_\_\_\_\_ (date),  
at \_\_\_\_\_ (city), California.

I certify under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
(sign above and type or print name  
below)